

ABC, Inc.

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Roger Goodspeed
General Attorney
Law & Regulation

October 30, 1997

Hand Deliver

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Dear Mr. Caton:

On behalf of ABC, Inc., transmitted herewith for filing with the Commission are an original and four copies of its Comments in MM Docket No. 97-182.

If there are any questions in connection with the foregoing, please contact the undersigned.

Very truly yours,

Roger Goodspeed

RG/ak
Enclosures

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MM Docket No. 97-182

COMMENTS OF ABC, INC.

Counsel for ABC, Inc.

October 30, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Preemption of State and Local Zoning)
and Land Use Restrictions on the) MM Docket No. 97-182
Siting, Placement and Construction)
of Broadcast Station Transmission)
Facilities)

To: The Commission

COMMENTS OF ABC, INC.

ABC, Inc. ("ABC") submits herewith its Comments in response to the Notice of Proposed Rule Making ("Notice") in the above-entitled proceeding.¹ ABC's interest in the Notice is based on its ownership of ten television stations which are subject to the aggressive build-out schedule to implement digital television ("DTV") included in the Commission's Fifth Report and Order.² Five of the ten stations are in the ten largest television markets which must construct DTV facilities by May 1, 1999. Three of those five stations (along with seventeen other network-affiliated stations) have voluntarily committed to build out DTV facilities by November 1, 1998.

¹ MM Docket No. 97-182, Notice of Proposed Rule Making, FCC 97-296 (released August 19, 1997).

² Fifth Report and Order, MM Docket No. 87-268 (released April 22, 1997).

In the Notice, the Commission stresses that the accelerated DTV build-out schedule is essential to realize the public interest benefits of the new DTV service and prompt recovery of spectrum. The Commission acknowledges that the schedule is a demanding one which requires unusually expedited construction of new facilities.³ To realize the Commission's ambitious goals for DTV, potential conflicts between the swift conversion and local zoning and land use regulation must be reconciled. The Commission must "reach a fair accommodation between federal and nonfederal interests."⁴ In our view, the preemption rule proposed in the petition by the NAB and Association for Maximum Service Television (the "Petition") strikes such a balance between implementing national broadcast policy and accommodating local land use, zoning and safety interests.

The Petition proposes a cautious, two-tier preemption approach. First, the proposed rule would entirely remove certain issues from local regulation. The Commission recognizes its traditionally exclusive jurisdiction over questions of radio frequency interference; environmental and health effects of RF radiation; and tower lighting, painting and marking.⁵ Those issues plainly must be removed from local consideration to avoid interference with the Commission's accomplishment of the objectives of Congress. The Commission's domination of the fields of

³ See Notice, pars. 2, 10.

⁴ Notice, par. 15.

⁵ Notice, par. 12.

interference, RF radiation and (in conjunction with the FAA) tower marking require preemption of parallel or conflicting local regulation not only as to the DTV build-out but to the siting of all broadcast transmission facilities.

Second, the Petition proposes procedural requirements that do not shut out local authorities on questions concerning broadcast facilities in their jurisdictions, but require that their procedures do not unduly impede the DTV build-out. The proposed rule provides specific time limits for state and local government action in response to requests for approval of the placement, construction or modification of broadcast transmission facilities. In addition, the rule would require that local decisions affecting such transmission facilities (i) be in writing, (ii) be reasonably related to safety issues (other than the considerations noted above subject to exclusive federal control) and (iii) be consistent with national broadcast policy. Those are eminently reasonable requirements designed to ensure that local police power does not cause the breakdown of the DTV build-out schedule carefully crafted by Congress and the Commission. The Commission recognizes that "delays in local zoning and land use decisions would hold up the construction of an essential part of the DTV transmission system and make it impossible for a licensee to satisfy the construction requirement to transmit 'a DTV signal strong enough to encompass the community of license' by the required deadline."⁶

⁶ Notice, par. 14, quoting Fifth Report and Order, par. 91.


Just as local procedural delays could frustrate Congressional and Commission objectives of prompt DTV build-out and spectrum recovery, so local substantive rules and decisions could unduly interfere with the federal broadcast scheme. The proposed rule properly requires that local actions affecting broadcast transmission facility construction or modification be based on legitimate local safety concerns.

Although authority over zoning and land use matters has traditionally been reserved to local government, the proposed preemption rule is narrowly targeted to direct the exercise of that authority in a manner consistent with the federal regulatory scheme established by Congress and the Commission.

Conclusion

For the reasons set forth above, the Commission should adopt the preemption rule proposed by the Petition.

Respectfully submitted,

By: 
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